of section 48 of the Ordinance and distributable among his creditors. The appeal is therefore allowed and the judgment of the learned judge set aside. The respondent will pay the costs here and in the court below.

Pike C.J. (Borneo) and **MacIntyre F.J.** concurred.

Appeal allowed.

Solicitors: *Shearn Delamore & Co.; Lee Yew Siong.*

PUBLIC PROSECUTOR v. ONN

[R.Cr.J. (Ali J.) September 2, 1968]
[Johore Bahru — Criminal Revision No. 3 of 1968]

Criminal Law and Procedure — Revision — Bond — Whether bond ordered under Criminal Procedure Code (Cap. 6), s. 173A can contain conditions under s. 294A.

The accused was tried by the magistrate, Johore Bahru under section 380 of the Penal Code. The magistrate though finding the charge proved proceeded to exercise his powers under section 173(ii)(b) of the Criminal Procedure Code and imposed the conditions provided in section 294A of the Code. The deputy public prosecutor drew the attention of the learned judge in revision that the conditions of the bond which the accused was ordered to execute were illegally imposed.

Held: the conditions provided in section 294A of the Criminal Procedure Code are not applicable to a bond ordered under section 173A of the Code and accordingly there should be an order that the offensive conditions be omitted.

CRIMINAL REVISION.

Fong Seng Yee (Deputy Public Prosecutor) for the applicant.

Respondent absent — notice served.

Ali J.: The record of this case was called at the instance of the learned deputy public prosecutor who was of the view that an error in law appearing in the order made by the trial magistrate be corrected under the revisionary powers of the court.

The accused was tried by the magistrate, Johore Bahru, on a charge under section 380 of the Penal Code for stealing in a dwelling house 2¼ yards of cloth. At the conclusion of the case the trial magistrate, though finding the charge proved, proceeded to exercise his powers under section 173A(ii)(b) of the Criminal Procedure Code. Whether or not this power should be exercised having regard to the accused's past record, which was disclosed at the trial, does not, however, come up for consideration here. The learned deputy public prosecutor has drawn my attention to this matter solely on the ground that the conditions of the bond, which the accused was ordered to execute, were illegally imposed. The record of this case clearly shows the terms of the order which, as expressed in the National Language, are these:—

"Di-ikat jamin di-bawah sekshen 173A(ii)(b) Kanun Peratoran Jenayah dengan $300 1 penjamin selama 2 tahun dan tertaklok pada sharat[2] yang di-buat di-bawah sekshen 294A Kanun Peratoran Jenayah (lihat Nota Penyaksian)."*

Further down the record the trial magistrate specified the conditions which are as follows:—

"(1) Di-kawal oleh saorang Pegawai Akhlak dalam tempoh jaminan itu.**

(2) Tidak di-benar berkawan atau berchampor atau bersama dengan orang[2] yang di-tudoh ada sebab[2] untok mengetahui atau memperchayai telah di-thabitkan atas kesalahan menchuri atau kesalahan[2] yang saumpama dengan menchuri."***

Simply stated the learned deputy public prosecutor's contention in his letter to me was that the two conditions, being conditions set out in section 294A, are inapplicable to a bond ordered under section 173A(ii)(b). One of the reasons given, which I do not consider to be strong enough, was that section 294A appears in the same Chapter as section 294, and that this Chapter is concerned only with the carrying out of sentences after conviction. I prefer to approach this problem in this way. Section 173A is clear in terms that when power is to be exercised the court shall not proceed to conviction. The record clearly suggests that the trial magistrate was aware of this. Since sentence follows conviction it must, therefore, be the intention of the Legislature that whenever a bond is ordered under this section, nothing which savours of a form of punishment should be inflicted upon the offender. A condition requiring the offender to be of good behaviour in paragraph (b) has no punitive effect inasmuch as it merely enjoins the offender to behave like any other law-abiding citizen. But the same cannot be said of the two conditions which were included in the bond. These conditions, which are clearly of the nature set out in section 294A, require not only that the offender be placed under the supervision of a probation officer for a defined period, but also prohibit him from associating with certain persons. Both have punitive effects in so far as they impose a certain amount of restraint on the offender either as regards movements or as regards free choice of companions. In other words, the freedom or liberty of the individual must certainly be affected by these conditions. Any sentence of a court of law necessarily affects the liberty or freedom of the individual. Section 294A contains conditions which are all punitive in effect

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* Ordered to enter into a bond under section 173A(ii)(b) of the Criminal Procedure Code with $300 one surety for two years and subject to the conditions made under section 294A of the Criminal Procedure Code (see Notes of Evidence).

** Be under the supervision of a Probation Officer during the period of the bond.

*** Not allowed to have friends or associate or be with persons who the accused has reason to know or believe to have had previous conviction for theft or offences of similar nature.

and which, if imposed, would amount to some form of punishment being inflicted on the offender. Accordingly, to inflict any of these conditions on an offender, who has not been convicted of an offence, would be repugnant to the accepted notion of justice. It is to be observed that section 294(1) of the Criminal Procedure Code applies to the circumstances in which a person, not being a youthful offender, has been convicted of any offence punishable with imprisonment. The effect of the bond ordered under this section is to suspend the sentence of imprisonment and it is, therefore, not objectionable to include any of the conditions set out in section 294A, punitive though they may be in effect. For the reasons stated I agree with the learned deputy public prosecutor that the conditions in section 294A are not applicable to a bond ordered under section 173A. Accordingly there will be an order that the two additional conditions imposed be omitted from the bond.

Order accordingly.

SIM LIM INVESTMENTS LTD. v. ATTORNEY-GENERAL

[F.C. (Wee Chong Jin C.J., Tan Ah Tah F.J. and Chua J.) September 3, 1968]

[Singapore—Federal Court Civil Appeal No. Y60 of 1967]

Income Tax — Statutory income — Dividend — Subsidiary company declaring dividend — Whether parent company entitled to treat dividend declared and paid in subsequent year as having been derived in a preceeding year — Accounting practice — Income Tax Ordinance (Cap. 166), sections 29, 35(7A) and 44(4).

This was an appeal from the decision of the High Court reported in [1968] 1 M.L.J. 116.

A subsidiary company declared a dividend in favour of its parent company in March 8, 1965. The parent company included such dividend in its assets of the year ending December 31, 1964. The comptroller treated the dividend as having been derived in the year in which it was declared and paid out in 1965. Winslow J. held that the statutory income of the company in respect of dividends is the full amount of the income from such dividend for the year preceding the year of assessment. The appellants appealed.

Held, dismissing the appeal: the learned trial judge was right in holding that there can be no distinction between the case of a shareholder who is an individual and the case of a shareholder who is itself a company holding shares in another company, and in both cases the statutory income from the dividends is the full amount of the income from the dividends for the year preceding the year of assessment.

FEDERAL COURT.

G. S. Hill for the appellant.

Sat Pal Khattar (State Counsel) for the respondents.

Cur. Adv. Vult.

Wee Chong Jin C.J. (delivering the judgment of the court): The appellants, Sim Lim Investments Ltd. are a holding company of a group of companies known as the Sim Lim Group, one of them being Sim Lim Company Ltd., a wholly trading subsidiary of the parent company.

On the 8th March, 1965, Sim Lim Company Ltd. declared a dividend of $1,192,500 pursuant to a resolution passed at an ordinary general meeting held on the 6th March, 1965.

On the 17th August, 1965, Sim Lim Investments Ltd., the parent company, declared to its shareholders a gross dividend from which tax was deducted under section 44(1) of the Income Tax Ordinance amounting in the aggregate to a total sum of $324,465.

In the accounts of the parent company, the dividend declared by Sim Lim Company Ltd. on the 8th March, 1965, was included by its auditors as income of the parent company for the year ended 31st December, 1964 although this dividend was paid by the subsidiary and received by the parent company in 1965. The Comptroller of Income Tax in his computation, however, treated the dividend declared in March, 1965, as income of the parent company for the basis period ending 31st December, 1965 and accordingly falling to be taxed in the year of assessment 1966.

The parent company on the other hand contended that this dividend declared by its subsidiary in March 1965 has been correctly treated by it in its own computation for income tax as its income for the basis period ending 31st December, 1964, thus falling to be assessed in the year of assessment 1965.

If the comptroller is right, this appeal fails. If Sim Lim Investments Ltd. is right, this appeal succeeds.

Winslow J. in the court below held that the comptroller was right and that on the true construction of section 35(7A) the dividend in question, for the purposes of ascertaining the statutory income of the appellants for the year of assessment 1965, was rightly excluded.

Section 35(7A) reads as follows:—

> "The statutory income of any person for any year of assessment in respect of dividends shall be the full amount of the income therefrom for the year preceding the year of assessment notwithstanding that the source of such income is not possessed by him during the year of assessment."

It is conceded that so far as an individual is concerned his statutory income for any year of assessment in respect of dividends shall be the full amount of the income from dividends declared or paid to him during the year preceding the year of assessment.

Winslow J. held that it would be erroneous and contrary to common sense to give a different meaning where a shareholder is not an individual